

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**LEONARD ROSS and  
COMMITTEE TO ELECT  
LEONARD ROSS,**

Respondents.

FPPC No. 99/204

OAH No. L2002030717

**PROPOSED DECISION**

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on June 7, 2002.

Julia A. Bilaver, Staff Counsel, represented complainant.

Leonard Ross appeared and represented respondents.

Oral and documentary evidence was received and argument given.

The record was closed and the matter submitted for decision on June 7, 2002.

The below order requiring respondent Leonard Ross to pay a monetary penalty of \$5,000.00 and file all overdue campaign disclosure statements is based on the following Factual Findings and Legal Conclusions.

**FACTUAL FINDINGS**

*Parties & Pleadings*

1. Wayne K. Strumpfer ("complainant"), Executive Director of the Fair Political Practices Commission ("FPPC"), made the Accusation in his official capacity.

The Accusation alleges respondent committed five separate violations of applicable law by late or complete failure to file required campaign disclosures before and after the election he competed in as a candidate. Complainant requests the maximum monetary penalty of \$2,000.00 for each violation, for a total monetary penalty of \$10,000.00.

Respondent timely filed a Notice of Defense and requested a hearing, which ensued.



2. Respondent Leonard Ross ("respondent Ross") was an unsuccessful candidate for a seat on the governing board of the Inglewood Unified School District in the April 6, 1999 election (sometimes referred to as the "election").

3. Respondent Committee To Elect Leonard Ross ("respondent Committee") was the "controlled committee" of respondent Leonard Ross, as that term is defined in Government Code section 82016<sup>1</sup>. It was organized on a specific date not established but between January 5 and January 22, 1999, in conjunction with the candidacy of respondent Ross in the election. It became a "committee" defined by section 82013 upon receiving contributions totaling One Thousand Dollars (\$1,000.00) or more.

#### *Facts Related to Alleged Violations*

4. On January 22, 1999, respondents filed a Form 410 "Statement of Organization Recipient Committee," indicating respondent Committee was "[n]ot yet qualified."

5. As candidate and controlled committee in the election, respondents Ross and Committee were required by section 84200.5, subdivision (c), to file the first pre-election campaign disclosure statement specified in section 84200.8. This first pre-election statement was due by February 25, 1999, to disclose information about their campaign activities up to, and including, February 20, 1999.

6. Respondents failed to file an appropriate first pre-election statement by February 25, 1999, as required by section 84200.8.

Respondents erroneously believed the Form 410 that indicated respondent "Committee" was not yet qualified previously filed on January 22, 1999, was an acceptable substitute for this first pre-election statement. This was based on another erroneous belief respondent Committee had not yet qualified because it had not received contributions.

7. However, respondent Committee in fact was qualified because respondents had received enough contributions, i.e. a personal loan from respondent Ross, to qualify. Moreover, a Form 410 was not an acceptable substitute for a first pre-election statement in any event.

8. The Los Angeles County Clerk's Office sent respondents two separate written notices in March of 1999, informing them this statement was past due. Respondents received the notices and believed, erroneously as discussed above, the County had sent them in error. Respondents did not contact the County Clerk's Office to inquire further.

9. As candidate and controlled committee in the election, respondents were also required, by section 84200.5, subdivision (c), to file a second pre-election campaign

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise indicated.



disclosure statement as specified in section 84200.8. This second pre-election statement was due by March 25, 1999, to disclose information about their campaign activities during the period February 21, 1999 through March 20, 1999.

10. Respondents failed to file a second pre-election statement by March 25, 1999, as required by section 84200.8, subdivision (b).

11. The Los Angeles County Clerk's Office sent respondents two separate written notices informing them this second pre-election statement was past due, one mailed on March 29, 1999, and the second mailed on April 13, 1999.

12. Respondents finally filed, on May 4, 1999, a single document intended to be a "pre-election statement" for the period of "1-1-99 through 3-20-99." Respondents intended this one document to serve as both first and second pre-election campaign statements. The County Clerk's Office accepted this document for this purpose.

However, the timing of this filing meant respondents in fact supplied no information about their finances to the voting public before the election. For example, the disclosure indicated respondents received contributions totaling \$7,300.00, including a \$4,500.00 personal loan from respondent Ross.

Also, respondents were 68 days late in filing the first pre-election statement, and 40 days late in filing the second.

13. As candidate and controlled committee in the election, respondents were required by section 84200, subdivision (a), to file a semi-annual campaign statement by no later than July 31, 1999, disclosing information about their campaign activities during the period March 21, 1999 through June 30, 1999.

14. Respondents failed to file a semi-annual campaign statement by July 31, 1999, as required by section 84200, subdivision (a).

15. The Los Angeles County Clerk's Office sent respondents two separate written notices informing them this statement was past due, one mailed August 10, 1999, and the second mailed September 1, 1999.

Respondents again erroneously believed these notices were sent in error, based this time on the erroneous belief they had filed a document properly terminating the campaign and the Committee. Respondents in fact had not, and therefore were required to file semi-annual post-election statements until they did file an appropriate termination notice.

Respondents finally filed an acceptable semi-annual campaign statement on February 23, 2000, after realizing one was still required. This filing was 207 days late.



16. As candidate and controlled committee in the election, respondents were required by section 84200, subdivision (a), to file another semi-annual campaign statement by no later than January 31, 2000, disclosing information about their campaign activities during the period July 1, 1999 through December 31, 1999.

17. Respondents failed to file a semi-annual campaign statement by January 31, 2000, as required by section 84200, subdivision (a).

18. The Los Angeles County Clerk's Office mailed respondents a written notice on February 14, 2000, informing them this statement was past due.

On a specific date not established, but between February 14 and February 25, 2000, respondents attempted to make the required filing, but did so on an improper form. On February 25, 2000, the County Clerk's Office mailed a notice informing respondents of this fact, and requested them to file the statement on an enclosed proper form.

Respondents did not at any time file an appropriate form of this statement.

19. FPPC Investigator Jon Wroten contacted respondent Ross by telephone on May 16, 2000, and interviewed him regarding his failure to timely file required forms. At the conclusion of the conversation, respondent Ross promised Investigator Wroten all overdue forms would be filed forthwith. Respondent subsequently filed none of those forms.

20. As candidate and controlled committee in the election, respondents were required by section 84200, subdivision (a), to file another semi-annual campaign statement by July 31, 2000, disclosing information about their campaign activities during the period January 1, 2000 through June 30, 2000.

21. Respondents failed to file a semi-annual campaign statement by July 31, 2000, as required by section 84200, subdivision (a).

22. The Los Angeles County Clerk's Office sent respondents two separate written notices in August of 2000, informing them this statement was past due. Respondents did not at any time file the required statement. However, respondents' financial data had not changed between the time of the third filing and the deadlines for the fourth or fifth filings.

23. The various errors made by respondents described above were not inadvertent or excusable, but rather the result of respondents' negligence in failing to properly read the instructions on the forms or inquiring with either the County Clerk's Office or the FPPC regarding the applicable rules and laws, after receiving constant written requests to file the tardy forms.

24. Respondent Ross did contact the County Clerk's Office at least twice to ask questions about the forms and filing deadlines. He testified that he received erroneous advice on these occasions causing him to make the errors described above, but he did not



establish the same. The only reasonable conclusion is that he, through his own fault, derived an imperfect understanding of what he was told by staff.

### *Aggravating Facts*

25. Respondent Ross should have been familiar with the disclosure requirements since he had been an unsuccessful candidate for a seat on the governing board of the Inglewood Unified School District in a prior election held June 3, 1997.

26. As a candidate in that election, respondent Ross was similarly required to file, by the same sections cited above, pre-election and post-election campaign disclosures.

27. Respondent Ross failed to timely file the following campaign disclosures for that election: (a) a pre-election statement by May 22, 1997, disclosing information about his campaign activities during the period March 16, 1997 through May 17, 1997; and (b) a semi-annual campaign statement by July 31, 1997, disclosing information about his campaign activities during the period May 18, 1997 through June 30, 1997.

28. On December 18, 1997, Respondent Ross filed late both the pre-election statement that was due by May 22, 1997, and the semi-annual campaign statement that was due by July 31, 1997.

29. As a result of the violations set forth in Factual Finding 27, respondent Ross paid a \$320.00 fine to the Los Angeles County Clerk's Office on a date not established. He also received, after March 31, 1999, an FPPC Warning Letter regarding these violations.

### LEGAL CONCLUSIONS

1. In enacting the Political Reform Act (the "Act"), California voters specifically found and declared, as stated at Government Code sections 81001, subdivision (h), and 81002, subdivision (f), previous laws regulating political practices had suffered from inadequate enforcement and it was their purpose to ensure the provisions of the Act be vigorously enforced.

One of the stated purposes of the Act is to assure contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, both before and after elections, so voters are better informed and improper practices are inhibited.<sup>2</sup>

2. Respondents' failure to file a first pre-election campaign disclosure statement by February 25, 1999, violated section 84200.8, subdivision (a), and therefore subjects respondents to a monetary penalty. Factual Findings 4-8 & 12.

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<sup>2</sup> Government Code section 81002, subdivision (a).



3. Respondents' failure to file a second pre-election campaign disclosure statement by March 25, 1999, violated section 84200.8, subdivision (b), and therefore subjects respondents to a monetary penalty. Factual Findings 9-12.

4. Respondents' failure to file a semi-annual campaign disclosure statement by July 31, 1999, violated section 84200, subdivision (a), and therefore subjects respondents to a monetary penalty. Factual Findings 13-15.

5. Respondents' failure to file a semi-annual campaign statement by January 31, 2000, violated section 84200, subdivision (a), and therefore subjects respondents to a monetary penalty. Factual Findings 16-19.

6. Respondents' failure to file a semi-annual campaign statement by July 31, 2000, violated section 84200, subdivision (a), and therefore subjects respondents to a monetary penalty. Factual Findings 19-22.

7. The factors set forth in California Code of Regulations ("CCR"), title 2, section 18361, subdivision (e)(4), have been considered in determining the amount of monetary penalty, if any, imposed upon respondents for violating the Act:

(A) The seriousness of the violation: Respondents' violations were neither trivial nor the most serious. They prevented the voting public from knowing their campaign finances before the election. The campaign was a relatively minor local one, however, and no evidence suggested any particular interest in the campaign or actual harm done to an opponent or the voting public. Respondents did ultimately file (late) three acceptable forms and attempted to file a fourth (late), which was rejected because the wrong form was used. Only one filing was completely disregarded (the last) and no financial data had changed between the last proper filing (the third) and the fifth.

(B) The presence or absence of any intention to conceal, deceive or mislead: There was a complete absence of intention by respondents to conceal, deceive or mislead. No evidence suggested the financial data finally disclosed was incorrect. Although respondents initially and erroneously stated the Committee was not yet qualified, this was purely the result of negligence on their part in not understanding applicable laws related to the types of contributions triggering qualified status.

(C) Whether the violation was deliberate, negligent or inadvertent: Respondents' violations were purely the result of inexcusable neglect. The several errors made were the result of neglect in not reading the rules on the back of each form and ignoring notices from the County Clerk's Office. This conduct was hardly inadvertent, but neither was it deliberate.

(D) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b): Respondent Ross did contact the County Clerk's Office



at least twice for instructions on filing the forms, but he misunderstood what staff told him due to his own neglect. Thus, while his efforts were far from "good faith," he still made some attempt to reach an understanding of the rules.

(E) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws: Respondent Ross violated similar laws in a prior election. He was fined and issued a warning letter as a result. He therefore should have been better versed in the rules related to the required forms and deadlines. However, the prior fine and warning were relatively minor. Thus, while there is some pattern of misconduct by Respondent Ross, that pattern is moderate, and far less egregious than a pattern sufficient to justify the maximum penalty.

(F) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure: Respondents filed the first three required filings after notification of their lateness, but well beyond the applicable deadlines and well beyond even the notices of deficiency. Respondents attempted to make the fourth filing but presented the wrong form; they did not attempt to correct that defect despite notification of the same. Respondents completely disregarded the fifth filing and subsequent notices. Thus, respondents to a moderate extent voluntarily tried to provide full disclosure after notification.

8. The above factors indicate a moderate penalty is appropriate in this case. Respondents frustrated the system by neglect that bordered on reckless disregard. Yet, the acts were not willful or deceitful and there is no evidence of actual harm done to the voting public. The fact pattern of this case is far less than the most serious violations of the Act, and to order respondents to pay the maximum amount for each violation would minimize future prosecutions of more egregious circumstances, such as fraud, intentional concealment of donors or finances for purposes of swaying larger elections, violations after several prior warnings or fines or adverse actions, or other serious misconduct. A penalty of \$1,000.00 for each of the five violations, for a total of \$5,000.00, would serve as a significant penalty to respondent and would constitute adequate and vigorous enforcement of the Act sufficient to protect the voters in future elections. Factual Findings 1-29.

9. Complainant's citation to the default cases of *Gray* (FPPC No. 95/219) and *Dragon* (FPPC No. 96/202) that ordered maximum penalty amounts for similar violations, does not support the same result in this case. It was not established either case was specifically designated and publicly indexed as precedent by the FPPC in accordance with Government Code section 11425.60, meaning they "... may not be relied on as precedent...". Even if they could be relied upon, the facts are distinguishable. It is clear from both decisions that respondents' respective defaults contributed to the maximum amounts imposed. In the case at bar, respondents requested a hearing, appeared, and presented some explanation for their misconduct.

10. Although the Accusation alleges both respondents violated the above-described sections of the Government Code, the prayer requests orders against only respondent Ross. Therefore, the below order will not include respondent Committee.

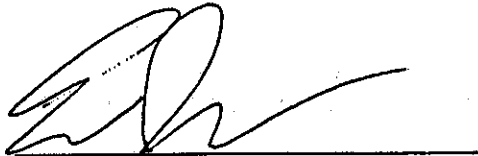


ORDER

Respondent LEONARD ROSS shall pay forthwith to the General Fund of the State of California a monetary penalty of \$ 5,000.00.

Respondent Leonard Ross shall forthwith file his overdue campaign disclosure statements described in paragraphs 18 and 21 above, as required by law.

DATED: July 1, 2002

  
ERIC SAWYER,  
Administrative Law Judge  
Office of Administrative Hearings